

In the Matter of Merchant Mariner's Document No. Z-920261-D2 and  
all other Seaman Documents

Issued to: PAUL A. BARNETT

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1010

PAUL A. BARNETT

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 15 August 1957, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman documents upon finding him guilty of misconduct. The three specifications allege that while serving as an able seaman on board the American SS GULF SHIPPER under authority of the document above described, on or about 21 July 1957, Appellant directed foul and abusive language toward the Third Mate; assaulted and battered the Third Mate; failed to obey the Third Mate's lawful order to leave the deck.

At the hearing, Appellant entered a plea of not guilty. The Third Mate and an able seaman appeared as witnesses for the Investigating Officer. Appellant testified and introduced the testimony of two other who were eyewitnesses. After considering the evidence, the Examiner announced the decision in which he concluded that the charge and three specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of six months.

The decision was served on 15 August 1957. Appeal was timely filed on 5 September 1957.

FINDINGS OF FACT

On 21 July 1957, Appellant was serving as an able seaman on board the American SS GULF SHIPPER and acting under authority of his Merchant Mariner's Document No. Z-920261-D2 while the ship was preparing to get underway from Callao, Peru.

At approximately 2230, the Third Mate arrived on the after deck to direct the handling of the mooring lines in that area. Appellant and four other seamen were present. The last line to be taken in was placed around the capstan in the wrong manner by

Appellant. The Third Mate told Appellant that if he was not going to do the work right, then to get away from the line and let somebody else do it. Some vulgar words were included in this statement. Since Appellant was offended, he directed foul and abusive language toward the Third Mate. The latter became angry and replied in kind. Appellant was restrained by one or two of the other seamen as he tried to approach the Mate who then took out a flashlight as protection while the last line was still being taken in. Appellant broke loose and used his fist to strike the Third Mate a single, hard blow on the right eye. The Mate ordered Appellant to leave the deck three times before he obeyed. The last line was on board when Appellant returned to the after deck. He obeyed the Mate's order to get off the deck.

The Third Mate suffered blurred vision and a cut around his right eye as a result of the blow by Appellant. The Mate did not stand his next sea watch. A scar remained at the time of the hearing because the wound had not been stitched. The Mate regained full use of the vision in his injured eye.

Appellant has no prior disciplinary record with the Coast Guard.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that foul and abusive language was used by Appellant only in response to the same type of language directed at Appellant by the Third Mate; Appellant struck the Mate in self-defense in apprehension of serious bodily injury based on the belief that the Mate held an opened knife; Appellant obeyed the order to leave the deck, then returned to the deck and again left when ordered to do so by the Mate.

For these reasons, it is respectfully submitted that the decision of the Examiner should be reversed.

APPEARANCE ON APPEAL: Leonard S. Ungar, Esquire, of New Orleans, Louisiana, by Julian Freret, of Counsel.

#### OPINION

The Examiner who saw and heard the witnesses accepted the testimony of the Third Mate as a truthful version of the entire incident. This version is set out in the above findings of fact. The Examiner rejected the testimony of Appellant and his two witnesses because of its conflicting nature concerning the circumstances of the most serious offense of assault and battery. Ordinary seaman Green testified that the Mate had an opened knife

in his hand before he was struck by Appellant. Able seaman Flowers stated that the Mate did not have a knife in his hand until after he was hit by Appellant; the knife was closed; and the Mate put the knife in his pocket when he was told to do so by Flowers. Neither Appellant nor the able seaman who testified for the Investigating Officer saw a knife; but Appellant stated that he hit the Mate when he put his hand in his pocket and Appellant heard Flowers tell the Mate to put the knife back in his pocket. In addition to these conflicts in testimony, the entire testimony of Green, which is relied on heavily by Appellant to establish his claim of self-defense, is evasive in nature. Since there is no reasonable ground upon which to reject findings of the Examiner, they have been adopted herein.

The Mate's first remark to Appellant was a disparagement of his ability to handle a mooring line properly rather than a reflection upon him as an individual. It appears that the exchange of foul and abusive insults which followed was initiated by Appellant and constituted misconduct on his part as well as on the part of the Third Mate.

On the basis of the findings, Appellant's claim of self-defense is without merit because he had no adequate reason to believe that he was about to be attacked by the Mate with a knife. The accepted version is that the Mate took out a flashlight when he saw that Appellant was being restrained and the Mate was still occupied with the task of directing the taking in of the last line in order to avoid fouling the propeller as the ship was getting underway. Even in the testimony of Appellant and seaman Green, it appears that the latter was attempting to keep Appellant from advancing upon the Third Mate. This indicates that Appellant was the aggressor. Hence, I concur in the conclusion that Appellant was guilty of assault and battery.

The specification alleging that Appellant failed to obey a lawful order of the Third Mate to leave the deck was properly found proved. Not only did Appellant disobey the Third Mate's first two orders to leave the deck but Appellant's original obedience to the third order was nullified by his return within a very short period of time.

In view of the serious breaches of shipboard discipline by Appellant, it is felt that the Examiner's order of six months' suspension was lenient. The Third Mate's vision was affected for a matter of days, but it was fortunately normal thereafter. Such an attack on a ship's officer aggravates the usual gravity of an offense of this nature.

#### ORDER

The order of the Examiner dated at New Orleans, Louisiana, on  
15 August 1957, is AFFIRMED.

J. A. Hirshfield  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 12th day of March, 1958.